

91 and 119; as to all which, the doubts or objections of the auditor, in these respects, must be overruled.

In the administration of the assets of a deceased debtor by this court, where he had been, in his life-time, a member of a partnership, it is now definitively established, that the partnership creditors must be first satisfied out of the joint funds; and the separate creditors first paid out of the separate estate. (i) Consequently, until the partnership creditors have been thus fully satisfied, the separate creditors can make no claim upon the partnership effects; nor until the separate creditors are satisfied, can the partnership creditors be permitted to take any thing from the separate estate. The debtor, in such cases, has two distinct capacities, the one a natural, the other a conventional capacity; (j) in the one case his capacity is that of a separate individual, in the other it is that of a partner according to the contract among an association of individuals. The creditors of these several capacities are as distinct as the estates so held, in respect of which the credit may be presumed to have been given: and the property of each is applied first to the satisfaction of the creditors of each; because a different course would be, in effect, to apply the property of one man to the payment of the debts of another. Where a partnership exists nothing can be said properly to belong to each member of it, but his dividend of the surplus after all the partnership debts are paid; so, on the other hand, that alone can be considered as properly the separate estate of an individual which remains, after all his separate debts have been paid. Each of those capacities of the same person is an implied surety for the other; or, in other words, partners are mutually sureties to the creditors for the share of each other; (k) but then it would be unequal and unjust to extend this suretyship, or implied liability beyond the surplus, or the clear estate belonging to each capacity; because the creditors of the one capacity hold it directly bound, and those of the other have only an eventual and secondary claim upon the same capacity after those to whom it was directly bound have been fully satisfied. (l)

But as the assets now to be administered are the proceeds of the separate estate of the late *Thomas Tongue*, it is clear, that all

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(i) *McCulloch v. Dashiell*, 1 H. & G. 97.—(j) *Salmon v. The Hamborough Company*, 1 Cha. Ca. 294; *Coppen v. Coppen*, 2 P. Will. 295; S. C. Sel. Ca. Chan. 30.—(k) *Ex parte Watson*, 4 Mad. 477.—(l) *Ex parte Elton*, 3 Ves. 240; *Gray v. Chiswell*, 9 Ves. 118; *Collyer Partu.* 337.